

102 KAR 1:320. Qualified domestic relations orders.

RELATES TO: KRS 161.220, 161.716, 403.190, 26 U.S.C. 414(p)

STATUTORY AUTHORITY: KRS 161.310(1), 161.700(4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310(1) requires the Board of Trustees of the Kentucky Teachers' Retirement System (KTRS) to promulgate administrative regulations for the administration of the funds of the retirement system. KRS 161.700(4) requires the Board of Trustees of KTRS to promulgate administrative regulations setting forth the requirements, procedures, and forms for the approval and processing of qualified domestic relations orders impacting the benefits of participants of the retirement system. This administrative regulation establishes these requirements.

Section 1. Definitions. (1) "Alternate Payee" is defined by KRS 161.220(26).

(2) "Benefits" means a monthly service or disability retirement allowance or refund payable at the request of a participant covered by KTRS who terminates employment in a KTRS covered position prior to becoming eligible to receive a retirement allowance.

(3) "Member" is defined by KRS 161.220(4).

(4) "Participant" is defined by KRS 161.220(24).

(5) "Qualified domestic relations orders" or "QDRO" is defined by KRS 161.220(25).

Section 2. (1) A QDRO shall state the following:

(a) The member's name, KTRS member identification number, and last-known mailing address;

(b) The alternate payee's name and last known mailing address;

(c) Whether the order applies to:

1. An active account from which the member is not currently receiving a retirement allowance; or

2. A retired account from which the member is currently receiving a retirement allowance and the date on which the member retired the account;

(d) The date of marriage;

(e) The date of decree of dissolution of marriage;

(f) That the order is for the purpose of property division;

(g) Whether the alternate payee shall receive payments under Option A, Option B, or Option C;

(h) The amount of the participant's monthly retirement allowance or termination refund to be paid by KTRS to the alternate payee as either:

1. A fixed dollar amount; or

2. The percentage calculated under Section 7(1) or (2) of this administrative regulation;

(i) When payments shall begin;

(j) When payments shall cease;

(k) That the alternate payee shall be paid in the same form as the participant;

(l) If the alternate payee spouse shall share in the participant's cost of living adjustments if the QDRO awards a fixed dollar amount to the alternate payee;

(m) Who shall be responsible for payment of the KTRS processing fee; and

(n) All information required on the Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits.

(2) A QDRO shall be:

(a) Approved by KTRS as to enforceability and compliance with the requirements of KRS 161.700 and this administrative regulation;

(b) Approved and submitted by the participant and alternate payee or their legal counsel;

(c) Signed by the judge of a court of competent jurisdiction;

(d) Filed with the clerk of the court; and

(e) Certified by the clerk of the court.

Section 3. Administrative Provisions. (1) Upon entry of a final divorce decree, the participant shall forward a copy of the decree to KTRS and:

(a) If the participant is a retired member, request:

1. A Change of Option Following Termination of Marriage form, if the participant wants to change his or her retirement option, which shall be done within sixty (60) days of the final divorce decree;

2. A Change of Beneficiary form, if the participant had chosen retirement Option I or Option II and does not want to change his or her retirement option, but wants to name a new beneficiary;

3. A Designation of Beneficiary for KTRS Life Insurance Benefit form, if the participant wants to designate a beneficiary other than his or her estate; or

4. A W-4P Withholding Certificate for Pension or Annuity Payments, if the participant wants to change the amount of federal tax withheld from his or her retirement benefit; or

(b) If the participant is an active member, he or she shall request:

1. A Designation of Beneficiary for KTRS Retirement Account Balance form, if the participant wants to designate a beneficiary other than his or her estate; or

2. A Designation of Beneficiary for KTRS Life Insurance Benefit form, if the participant wants to designate a beneficiary other than his or her estate.

(2) Thirty (30) days prior to filing the QDRO with KTRS, the participant or alternate payee shall present a written request for benefits information for divorce purposes. The participant, alternate payee or third party, including the party's legal counsel, shall provide a completed KTRS Authorization for Release of Information form with the request.

(3)(a) For a QDRO directed to an active account from which a participant is not currently receiving a retirement allowance, KTRS shall forward a KTRS Report for Current Year Earnings and Contributions form to the participant's employer upon receipt of the written request and release.

(b) The employer shall return the completed form to KTRS within ten (10) work days.

(4) If the QDRO is directed to an account from which the participant is not currently receiving a retirement allowance, KTRS shall not project future earnings or future service. KTRS shall provide:

(a) The participant's total accrued service credit, including service credit purchased during the marriage, and the member account balance, including the total amount of accrued contributions and interest, as posted at the end of each fiscal year during the marriage and

for which an employer annual report has been received by KTRS and for which the member has not received a refund; and

(b) An estimate of the monthly retirement allowance the participant would receive if the participant retired without a statutory reduction of the basic retirement allowance based upon the participant's final compensation and total accrued service credit as of the date of dissolution of marriage.

(5) If the participant has retired, KTRS shall provide the amount of the participant's monthly retirement allowance and the participant's total accrued service credit, including any service credit purchased during the marriage. The parties, their legal counsel, or the court may use the information to decide what portion of the participant's account is marital. KTRS shall not decide whether, or if, any portion of the participant's account is marital and potentially subject to division.

(6) The participant or alternate payee or legal counsel shall submit a Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits form to KTRS for review forty-five (45) days prior to filing the QDRO with the court. If more than one (1) of participant's accounts is subject to classification and division as marital property, a separate QDRO shall be issued for each KTRS account.

(7) KTRS shall not review the QDRO unless it is accompanied by the following:

(a) The KTRS Administrative Regulatory Compliance form, which has been approved by both the participant or alternate payee or their legal counsel;

(b) A fifty (50) dollar nonrefundable processing fee, by certified check or on the attorney's trust account, made payable to the Kentucky State Treasurer, except that a processing fee shall not be charged for a QDRO issued solely for child support;

(c) The KTRS Confidential Information form, which shall include the participant's and alternate payee's address, Social Security number, and date of birth;

(d) Copies of the participant's and alternate payee's signed Social Security cards;

(e) KTRS Authorization for Direct Deposit form; and

(f) Any other documents that are required to confirm additional service credit purchased, or sought to be purchased, for retirement calculation purposes under KRS 161.220 through 161.716, including KTRS Military Service Certification and Affidavit form, with a copy of discharge papers.

(8) Within twenty (20) days of receipt of the QDRO, KTRS shall notify the participant and alternate payee in writing whether the QDRO meets KTRS requirements. If the QDRO meets KTRS requirements, KTRS shall approve the QDRO and circulate an original, signed QDRO for signature by the participant and alternate payee for submission to the court. If the participant or alternate payee is represented by legal counsel, the approved QDRO shall instead be provided to their legal counsel for signature by counsel and submission to the court. KTRS shall forward a W-4P Withholding Certificate for Pension or Annuity Payments form to the alternate payee.

(9) If the QDRO does not meet KTRS requirements, KTRS shall notify the participant and alternate payee in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance. If the participant or alternate payee is represented by legal counsel, this notice shall instead be provided to their legal counsel. The amended QDRO shall be submitted to KTRS for review and approval prior to filing with the court.

(10) KTRS shall reject any QDRO entered by a court which has not been reviewed or approved by KTRS prior to its submission to the court. KTRS shall notify the participant, the alternate payee, or their legal counsel, and the court in writing, identifying those provisions which are not in compliance and the amendments needed to bring the QDRO into compliance before it shall be accepted by KTRS.

(11) If the QDRO is subsequently amended before filing with the court, the amended QDRO shall be resubmitted to KTRS with a twenty-five (25) dollar nonrefundable processing fee for review and approval.

(12) Following approval by the court, the participant, alternate payee, or legal counsel shall file a certified copy of the QDRO with KTRS.

(a) The QDRO shall not become effective until the certified copy is received by KTRS.

(b) Upon receipt of the certified copy, KTRS shall designate the participant's account for implementation of the QDRO.

(c) While a separate account balance shall not be maintained for the alternate payee, a separate payroll account shall be established.

(d) Payments to the alternate payee shall commence in the calendar month following the date that a certified copy of the QDRO is received by KTRS, if the alternate payee has supplied a correctly executed W-4P Withholding Certificate for Pension or Annuity Payments form.

(13) If KTRS is enforcing a QDRO which is subsequently amended or terminated by the court, then either the participant, alternate payee, or legal counsel shall submit a certified copy of the amended QDRO or order of termination to KTRS for processing.

(14) The participant, alternate payee, or legal counsel shall not submit a QDRO that is not final and under consideration by an appellate court.

(15) The alternate payee shall be responsible for notifying KTRS of any change in name, mailing address, or banking information.

(a) KTRS shall provide a Name or Change of Address form or Authorization for Direct Deposit form upon request.

(b) KTRS shall contact the alternate payee at the last known mailing address on file to notify the alternate payee when an annuity benefit subject to the QDRO becomes payable.

(c) Other than sending a notice as established in paragraphs (a) and (b) of this subsection, KTRS shall have no duty or responsibility to search for, or locate, the alternate payee.

(d) If the notification sent to the alternate payee's last known address is returned due to the alternate payee's failure to notify KTRS of an address change, within sixty (60) days of the return of the notification to the alternate payee, the amounts otherwise payable to the alternate payee shall be paid to the participant until a new address is provided by the alternate payee.

(e) KTRS shall have no liability to the alternate payee with respect to amounts paid to the participant.

(16) The participant shall be responsible for notifying KTRS in writing of an event which causes benefit payments to the alternate payee spouse, child, or other dependent, to cease.

(a) The participant shall provide KTRS with a certified copy of the alternate payee's death certificate or marriage certificate.

(b) The alternate payee shall also be responsible for notifying KTRS in writing of the alternate payee's remarriage if, under the terms of the QDRO, that is an event that terminates the alternate payee's right to receive any payments.

(c) KTRS shall not be responsible for payments made to the alternate payee until it is given timely written notice of any event terminating those payments.

Section 4. A QDRO may apply to a participant's:

(1) Retirement allowance;

(2) Disability retirement allowance; or

(3) Termination refund.

Section 5. A QDRO shall not apply to a participant's:

- (1) Survivor annuity that becomes payable after the member's death;
- (2) Survivor benefits that become payable after an active contributing member's death;
- (3) Accounts that are not vested at the time of the dissolution of marriage;
- (4) Life insurance benefit;
- (5) Refund as a result of an error;
- (6) Refund of an active or retired account in response to a member's death;
- (7) Health insurance; and
- (8) Any other payment or benefit not described in Section 4 of this administrative regulation.

Section 6. If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's annuity benefits and dies before the participant dies, retires, or withdraws his account, the entire remaining account value shall be restored to the participant.

Section 7. Calculation and payment. (1)(a) If the participant has retired, the portion of the participant's benefits payable to the alternate payee as a percentage of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), shall be calculated by the following fraction:

1. The numerator of which shall be the participant's total full and fractional years of creditable KTRS service earned during the marriage, including service credit purchased during the marriage; and

2. The denominator of which shall be the participant's total full and fractional years of KTRS service credit through the date of retirement.

(b) The resulting fraction shall be converted to a percentage which shall be divided by two (2).

(2)(a) In the case of an active account, the portion of the participant's benefits payable to the alternate payee as a percentage of the participant's total service retirement allowance, disability retirement allowance, or refundable account balance, accrued through the date of dissolution of marriage, that is in excess of the retirement benefits of the alternate payee as provided under KRS 403.190(4), shall be calculated by the following fraction:

1. The numerator of which shall be the participant's total full and fractional years of creditable KTRS service earned during the marriage, including service credit purchased during the marriage, as reported by the parties or their legal counsel in Option C of the QDRO; and

2. The denominator of which shall be the participant's total full and fractional years of KTRS service credit as determined by KTRS at the time that the participant retires either by service retirement or disability retirement or requests a refund of his or her account balance.

(b) The resulting fraction shall be converted to a percentage which shall be divided by two (2).

(3) If the participant is or will be receiving a disability retirement allowance, the participant's total annuity benefit for purposes of this administrative regulation shall be calculated under the service retirement formula established under KRS 161.661(5), even if the entitlement period described under KRS 161.661(3) and (4) has not expired.

(4) If an alternate payee has, under the terms of the QDRO, been awarded a share of the participant's disability retirement allowance which is subsequently discontinued, the alternate payee shall not receive a benefit. Further, if a participant remains disabled at the end of his or her entitlement period, pursuant to KRS 161.661(5), the disability benefits shall be recalculated which may result in a lower monthly payment to both the participant and the alternate payee.

(5) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, the participant's total annuity benefit shall be calculated without inclusion of the discounts required under KRS 161.620(1)(b) and (d).

(a) If at retirement the participant is subject to discounts required under KRS 161.620(1)(b) and (d), and if the QDRO establishes a set dollar amount to be withheld from the retirement benefits that are payable to the participant and to be paid to the alternate payee, KTRS shall reduce the amount to be paid to the alternate payee under the QDRO by the amount of the discounts.

(b) KTRS shall increase the amount paid to the alternate payee in amount equal to any discounts that are subsequently eliminated as the result of the participant's return to work after retirement under the provisions of KRS 161.605(11), upon the participant's resumption of receipt of retirement benefits.

(6) If the QDRO is directed to an account from which the participant is not receiving a retirement allowance, and the participant at issuance of the QDRO is not eligible for calculation of his total annuity benefit based on his three (3) highest salaries as provided under KRS 161.220(9), then his total annuity benefit shall be calculated on his five (5) highest salaries.

(7) The participant may select any retirement option, but payment to the alternate payee shall be measured as though the participant had chosen Option I, Straight Life Annuity with Refundable Balance, under KRS 161.620 and 102 KAR 1:150.

Section 8. Any person who attempts to make KTRS a party to a domestic relations action in order to determine an alternate payee's right to receive a portion of the annuity benefits payable to the participant shall be liable to KTRS for its costs and legal fees.

Section 9. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) "KTRS Authorization for Release of Information", 15 January 2013;
- (b) "KTRS Report for Current Year Earnings and Contributions", 14 July 2010;
- (c) "Qualified Domestic Relations Order to Divide Kentucky Teachers' Retirement System Benefits", 14 March 2014;
- (d) "KTRS Administrative Regulatory Compliance", 14 July 2010;
- (e) "KTRS Confidential Information", 14 January 2013;
- (f) "KTRS Authorization for Direct Deposit", 14 July 2010;
- (g) "KTRS Military Service Certification and Affidavit", 14 July 2010;
- (h) "KTRS Name or Change of Address", 14 July 2010;
- (i) "Change of Option Following Termination of Marriage", 15 February 2002;
- (j) "Change of Beneficiary", February 2002;
- (k) "Designation of Beneficiary for KTRS Life Insurance Benefit", 15 January 2013;
- (l) "Designation of Beneficiary for KTRS Retirement Account Balance", 15 January 2013; and
- (m) "W-4P", 2013.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Kentucky Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m.

(3) W-4P may also be obtained at www.irs.gov/pub/irs-pdf/w4p.pdf. (37 Ky.R. 606; Am. 989; Am.1170; eff. 11-8-2010; 39 Ky.R. 1901; 2149; eff. 5-31-2013; 40 Ky.R. 2321; 2675; eff. 7-7-2014.)